IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3004 OF 2003

M/s. Nahalchand Laloochand Pvt. Ltd. & Ors. ..Petitioners.

Vs.

State of Maharashtra & anr. ..Respondents.

...

Mr. D.H. Mehta i/b M/s. Prakash & Co. for the Petitioners.
Mr. Pradeep Jadhav, AGP for the State.
Mr. P.S. Deore, SDO Mumbai Suburban District.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

14th September, 2006.

P.C. :

1. In these proceedings under Article 226 of the Constitution the Petitioners seek to challenge the legality and validity of a corrigendum issued by the District Collector, Mumbai Suburban District on 18th October, 2003 in purported exercise of powers under Section 155 of the Maharashtra Land Revenue Code 1966. Rule was issued on the Petition on 18th December, 2003 and an interim order staying the enforcement of the corrigendum was passed. No reply has been filed by the Respondents to the Petition.

2. The case of the Petitioners is that a person by the name of Marya Govind Warli was the tenant in respect of agricultural lands admeasuring 12,614.25 sq. yds. of Village Dahisar, Taluka Borivali, Mumbai. According to the Petitioners, these lands were comprised in Revenue Survey No.327, Hissa No.3 corresponding to City Survey 1457 and revenue Survey No.328, Hissa No.11 corresponding to City Survey No.1462. On 1st September, 1986 a deed of partnership is stated to have been entered into between the aforesaid tenant and the First Petitioner for the development of the lands. The tenant expired on1st March, 1987. The case of the Petitioners is that on 14th August, 1987 a succession certificate was issued to a lady by the name of Devkubai as the heir of the deceased tenant. Devkubai is alleged to have confirmed the transaction with the erstwhile tenant on 8th January, 1988. A certificate under Section 32-M of the Bombay Tenancy & Agricultural Lands Act, 1948 was stated to have been issued to Devkubai on 17th July, 1989. According to the Petitioners, on 23rd August, 1990 the Sub Divisional Officer passed an order

under Section 43 of the Act granting permission for the sale of the said lands by Devkubai to the Second Petitioner. On 18th January, 2001, the Sub Divisional Officer is stated to have levied an N.A. assessment together with a penalty aggregating to Rs.3,78,728/-. Devkubai expired in the meantime on 20th July, 2000.

3. A complaint, it appears was preferred to the Minister of State for Tribal Development by one Suresh Nankar for restoration of the lands to him claiming that the lands belong to him as a tribal. An order was passed by the Minister on 16th September, 2003 directing that the land should be restored to the complainant and that the unauthorized construction carried thereon ought to be demolished. On 17th October, 2003, notices were issued to the Petitioners informing them that by unauthorizedly converting agricultural lands for non agricultural purposes from 1st August, 1989 the Petitioners had rendered themselves liable for penal action under Section 45 of the Land Revenue Code. Another notice was issued to the Petitioners on 17th October, 2003 calling upon the Petitioners to show cause as

to why the lands should not be restored to the complainant, Suresh Nankar.

4. The Petitioners thereupon moved a writ petition before this Court, Writ Petition 2515 of 2003, to impugn the notice dated 17th October, 2003 and the decision taken by the Minister of State for Tribal Development on 16th September, 2003. A Learned Single Judge of this Court was of the view that it was necessary that a verification be carried out on the question as to whether the predecessor-in-title of the Petitioners, Smt. Devkubai Kakdya Nankar was a tribal. The Court accordingly issued directions for the verification of the tribe status of Devkubai. In the first instance the Competent Authority under the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste Certificate) Act, 2000 was directed to decide the application for the issuance of a caste certificate. Thereupon the caste certificate was to be sent to the Scrutiny Committee for verification under Section

6 of the Act. In the meantime, the Court directed that proceedings for the restoration of land pending before the Sub Divisional Officer shall remain stayed and in the event that it was found that Devkubai was a member of the Scheduled Tribe, the stay shall continue for a period of three weeks after the final order of the Scrutiny Committee. The Court directed that any construction made by the Petitioners thereafter will be at their own risk and no equity will be claimed.

5. The Petitioners had in the meantime received a corrigendum dated 18th October, 2003 to the N.A. order dated 15th October, 2003. The Petitioners moved a Chamber Summons (Chamber Summons 327 of 2003 in Writ Petition 2515 of 2003) for amending the Petition. However, on 9th December, 2003 liberty was granted to the Petitioners to withdraw the Chamber Summons with permission to file a separate writ petition to challenge the corrigendum. Accordingly, the present proceedings were instituted in order to challenge the corrigendum.

6. In support of the Petition it has been submitted before the Court that the corrigendum proceeds on the basis that Devkubai Kakadya Nankar belonged to a Scheduled Tribe and that the lands could not be converted to N.A. use. Hence, learned counsel submitted that since the very question as to whether their predecessor-in-title belongs to a Scheduled Tribe is subject to a verification, which is required to be carried out by the Scrutiny Committee, the corrigendum could not have preceded such a decision. Moreover, it was urged that under Section 155 of the Land Revenue Code it was not open to the Collector, to issue a corrigendum of this nature which was substantive in character since the power under Section 155 is to correct clerical errors and any errors which the parties interested admitted to have been made in the record of rights.

7. At the hearing of the present proceedings, the AGP was called upon to take instructions on the present status of the verification of the tribe status of Devkubai Kakadya Nankar as ordered by the Learned Single Judge in the judgment and order

dated 9th December, 2003 in Writ Petition 2515 of 2003. The AGP has stated on instructions that the proceedings are still pending before the Scrutiny Committee. The AGP has taken instructions from the Sub Divisional Officer, Mr. P.S. Deore, who is present before the Court and states on instructions that having regard to the fact that the Scrutiny Committee is still to take a final decision on the verification of the tribe status of the person through whom the Petitioners claim title, the corrigendum dated 18th October, 2003 (Exh.KK) is withdrawn, but liberty may be granted by this Court to the government to take appropriate action in accordance with law in the event that it is found that the lands belong to a tribal person. The statement of the AGP is accepted and liberty as sought is granted. It is clarified that the State Government shall not be precluded from taking recourse to such action as is open in law in the event that it is found that lands belonging to a tribal were transferred in violation of law. All the rights and contentions are kept open in that regard. The Petition is accordingly disposed of. There shall be no order as to costs.